HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No. 817 of 2007

Between:

M/s. Hindustan Shipyard Limited,
(Government of India undertaking)
Rep., by its Chairman & Managing Director,
Visakhapatnam and two others.

… Appellants

AND

Hindustan Shipyard Limited Labour &
Staff Union, Visakhapatnam,
Rep., by its General Secretary,
V. Narsing Rao.

… Respondent

: JUDGMENT :

Counsel for the appellants : Shri P. Nageswar Sree

Counsel for the respondent : Shri G. Vidyasagar

Dated: 04th October, 2007

Per G.S. SINGHVI, CJ.

This is an appeal for setting aside order dated 14.3.2007 passed by the learned Single Judge in Writ Petition No.35214 pf 1997, whereby he directed the appellants to virtually regularize the services of the employees, who are said to be members of Hindustan Shipyard Limited Labour and Staff Union, Visakhapatnam (the respondent herein).

In the writ-affidavit filed by him, Shri V. Narasing Rao, General Secretary of the respondent Union, averred that 14 employees have been working in Hindustan Shipyard Limited Guest House in the category of skilled and semi-skilled workers for more than 10 years without break, but their services have not been regularized and they are being paid daily wages. According to him, non-regularisation of the services of the employees amounted to depriving them of the benefit of regular pay and weekly off, holidays and other national and festival holidays.

In the counter-affidavit filed by Shri P.E. Prasad, General Manager (Personnel & Administration), the following objections were raised to the very maintainability of the writ petition:

"4. It is submitted that the petitioner herein is not competent to file the present writ petition as it has no representative capacity to represent the regular/casual employees of the 1st respondent as all the said employees are not the members of the said Union. There is another Union functioning under the name and style of Hindustan Staff & Labour Union, which is the recognized Union being the majority Union. There are also few other registered Unions viz., 1) M.S. Staff & Labour Union, 2) H.S. Staff & Workers Union, 3) H.S. Sramika Sangh, 4) H.S. Progressive Staff & Workers Union, 5) H.S. Staff & Staff Union, 6) H.S. Ltd., Employees Union and 7) H.S. Staff & Workers Association. In fact, the petitioner Union had not even participated in the elections conducted by the Asst. Commissioner of Labour, Visakhapatnam during August, 1995, as per code of discipline. The same, therefore, reflects that the petitioner Union has not acquired the minimum eligibility/requirement for participating in the elections. Further, the petitioner

except stating vaguely that the employees working in the Hindustan Shipyard Limited Guest House are members of the petitioner Union had not specifically pleaded that it is the recognized Union nor the 14 workmen working at the Guest House are its members. In the absence of the same, the petitioner Union has no locus standi to file the present writ petition and the same is liable to be dismissed.

5. It is submitted that the 1st respondent herein is a company registered under the Indian Companies Act, 1956 and is engaged in ship building and ship repair activities. The said company is purely a commercial business concern and it is not involved in any sovereign or governmental functions. Therefore, the respondent Company is not a State nor an authority nor instrumentality of State as contemplated under Art.12 of the Constitution of India for the purpose of this case. Therefore, the writ petition is not maintainable and no writ can lie and the petition is liable to be dismissed in limini.

6. It is further submitted that the issue involved in the present writ petition require an enquiry elaborately into various questions of fact and this Hon'ble Court exercising its jurisdiction under Art. 226 of the Constitution of India cannot conveniently decide the same. The issue involved require elaborate enquiry and this can be conveniently done in a trial court where both the parties would have the opportunity to lead the evidence to cross-examine witnesses and to establish their case. The writ petition is totally beyond the scope and ambit of Art. 226 of the Constitution of India and is liable to be dismissed in limini."

On merits, it was averred that there are no sanctioned posts of Cooks-cum-Bearers (skilled) and Helpers-cum-Bearers (semi-skilled) and, therefore, the casual employees cannot be regularized. It was further averred that there are about 5100 employees on the rolls of the company, who are engaged by following the procedure of recruitment laid down under the recruitment rules and keeping in view the reservation in favour of the Scheduled Castes, Scheduled Tribes and O.B.C. candidates. According to

Shri Prasad, the vacancies are notified to the employment exchanges as per the requirement of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, and are advertised in the newspapers and those who are found suitable are appointed. All this is evinced from paragraph 10 of the affidavit of Shri Prasad, which is extracted below:

"10. It is submitted that the 1st respondent herein namely Hindustan Shipyard Ltd., is engaged in the business of building ships and carrying out

repairs to the old and damaged ships. This respondent engages about 5100 number of employees on rolls on permanent basis. The employees in the respondent Company are engaged through a selection process of recruitment in accordance with the laid down Recruitment Rules of the Company subject to the candidates possessing the required educational qualification, required skill, experience, suitability, required age group after looking into antecedents of each candidates etc. This respondent Company also duly complies with the rules of reservation on filling up of the vacancies i.e., reserving some vacancies to SC, ST and OBC candidates. The employees are recruited by notifying the vacancies to the Employment Exchange in compliance with the Compulsory Notification of Vacancies Act with a request to sponsor candidates or by open advertisement through newspapers inviting applications from suitable candidates. The candidates are required to undergo written test/trade test and interview as may be decided by the Management depending upon the posts. In the instant case, none of the Casual workmen engaged by the Guest House Supervisor were recruited as per the approved recruitment procedure of the Company and most of them do not fulfill the job specifications / requirements for the post. The designations in which they are engaged and working in the Guest House are not the approved designations obtaining in the Company. In spite of the same, they were engaged as their engagement was purely on casual basis. Any person seeking employment in the 1st respondent Company has to be necessarily recruited as per the approved procedure through the recognized channels of recruitment namely Employment Exchange or advertisement etc. Subsequently, they have to face test/interview facing the selection committee. The petitioners cannot claim Employment to any person by giving a go-bye to the said established procedure for recruitment as well as the rules of reservation for ST and SC, OBC etc. In any event, there are no vacancies in the Guest House. Therefore, the question of filling up of the non-existing vacancies does not arise."

The learned Single Judge did not advert to the objections raised by the appellants to the maintainability of the writ petition on the ground that appellant No.1 does not fall within the definition of "State" under Article 12 of the Constitution, that the petitioner (the respondent herein) is not a representative Union of the workers, that all those employed in the Guest House are not members of the petitioner Union, that sanctioned posts are not available and that appointments can be made only by following the method of recruitment prescribed under the Rules and disposed of the writ petition by directing regularization of the services of the casual employees only on the ground that as of now they have worked for 20 years. This is evident from the following

extracts of the order under challenge:

"From the above, it is clear that the petitioners are continuously working for more than 20 years as of now. It is also the case of the respondent-company that it had tie up with some foreign countries and also ONGC who were very frequently visiting their guest house and the members of the petitioner union are engaged. It is also not in dispute that 10 posts of un-skilled and four posts of skilled workers were sanctioned by the Management personnel for the purpose of maintaining the guest house. It is also further stated by the respondent-company that not only they tie up with foreign countries, ONGC but also various Shipping Agencies in the country. They sent their personnel for training because the respondent-company has expertise infrastructure for training the personnel. The respondents filed a casual and usual counter. They have not categorically denied that the petitioners are not engaged except saying that there are no sanctioned vacancies and they are engaged on casual basis. It is further stated that the engagement of the members of the petitioner union depends upon the exigencies. They have not asserted that the petitioners cannot be engaged continuously and there is no work available. It can be understandable that some training is imported for one year or two years continuously. For the last more than 20 years, the respondent-organization is imparting training to the personnel from various organizations including some foreign countries and Shipping Agencies. Therefore, it cannot be said that the services of members of the petitioners' union would be exploited by appointing them on casual basis for such long period of 20 years.

Under those circumstance, the respondent-company is directed to consider the case of the members of the petitioner-union by absorbing them in any capacity and put them on a regular time scale so that they will have security of employment at least after 20 years of their service and they will get some benefits at the time of retirement and the services of the petitioner-union shall not be discontinued till then. This exercise shall be completed within a period of 3 months from the date of receipt of a copy of this order."

We have heard learned counsel for the parties. In our opinion, the order under challenge is liable to be set aside because the learned Single Judge did not consider and decide the objections raised by the appellants herein to the maintainability of the writ petition. If the objection raised in paragraph 4 of the affidavit of Shri P.E. Prasad was accepted, the writ petition would have been dismissed on the ground that the petitioner does not have the locus to represent the cause of the employees. Likewise, if a finding was to be recorded that appellant No.1 does not fall within the definition of "State", then the learned Single Judge could not have directed for regularization of the services of casual or daily wage employees on the premise that the action of

the employer is arbitrary and violative of the doctrine of equality enshrined in Articles 14 and 16.

The question whether a direction for regularization of the services of the employees, who were engaged otherwise than after following the procedure prescribed under the recruitment rules, can be given is also debatable. Therefore, without deciding the objections raised by the appellants, the learned Single Judge was not at all justified in directing regularization of the services of the casual employees.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition is remanded to the Single Bench for fresh adjudication.

At this stage, Shri G. Vidyasagar, learned counsel for the respondent made a statement that 11 out of the 14 employees are still continuing in service and, therefore, the Court may protect their present status. The request of the learned counsel is reasonable and merits acceptance. Hence, we direct that till fresh adjudication of the writ petition, the workers, who are employed in the canteen of appellant No.1, shall be allowed to continue in service on the same terms and conditions.

G.S. SINGHVI, CJ.

C.V. NAGARJUNA REDDY, J.

Date: 04.10.2007
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